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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,643	04/10/2001	Isaiah Moore JR.	IM-1	7659

7590
Michael I. Kroll
171 Stillwell Lane
Syosset, NY 11791

12/23/2003

EXAMINER

ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
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3711

13

DATE MAILED: 12/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/829,643

Applicant(s)

MOORE, ISAIAH

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Randall (3,099,450) in view of Franklin (Instructional Booklet for Major League Pitching Trainer).

Randall shows a baseball batting practice apparatus and method of use, comprising: selecting a resilient (see column 1, lines 20-25) spherical ball (A) from which a segment (B) has been removed to leave the ball comprised of an exterior spherical portion (1) and a flat area (2), the removed segment being sized such that a perpendicular line from the center of the flat area to the opposite side of the remaining spherical portion is equal to or between forty-five and fifty-five percent (see column 1, lines 36-40 and lines 63-66) of the original spherical ball diameter; Randall provides instructions for illustrating (Note: to illustrate is taken to mean to clarify, as by use of examples or comparisons or steps) at least one of grips, arm movement and release methods for pitching a baseball (see column 1, lines 44-50); additionally, Randall provides the steps for enabling the first player, in the instant case the pitcher to grip, throw and release the half-ball in a manner demonstrated by the steps or instructions in order to carryout one of several chosen pitches (see column 1, lines 51-62; and column 2, lines 23-26); and further providing the steps for enabling a second player, in the instant case the batter to swing a bat having a diameter

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smaller than a regulation baseball bat (see column 2, lines 23-26) at the ball, wherein such steps enables the batter to attempt to identify standard pitches associated with arm movements, and improve the batter's batting skills. With regards to the limitation "selecting a pitcher of lesser skill", this limitation although not explicitly taught by Randall, nevertheless, it is considered an obvious step, since pitchers have various degree of skills, and most likely one pitcher would be less skilled than another and would require additional attention and training, and it would have been obvious to select a pitcher of "lesser skill" from a group of pitchers/players in order to provide additional training for that particular player so that his skills are improved and become comparable to the other pitchers. With regards to the use of an instructional table, Randall gives a few representative examples for carrying out different pitches using the modified ball. Randall in his Patent shows these steps in text-form and not in tables, charts and graphs. However, it is well known that for marketing purposes, often times instructions are illustrated in the form of tables and figures to simplify the method of use or assembly for the end user. Franklin also shows this feature. In view of Franklin it would have been obvious to have provided an instructional booklet having tables and figures for the training apparatus of Randall. The motivation being, so that the pitchers and batters can more readily carryout the instructions necessary to use the apparatus of Randall.

3. Claims 26-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art of record as applied to claim 25 and further in view of "The Visual Dictionary of Baseball (TVDB)".

Randall has not expressly disclosed each and every arm movement required to carry out the various known pitches. Randall gives a few representative examples for gripping, throwing

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and releasing the half-ball. e.g. the ball can be held so that the flat side is tilted at a slight angle to the right, left, up or down, thus producing variations from normal flight, by doing so a number of varieties of pitching techniques can be developed. Randall defines the steps required for gripping, throwing and releasing the half-ball, one familiar with baseball would be able to determine the pitch. Additionally, Randall teaches that a whip-like side arm pitch can be employed, so that the projectile, when released, is given a spinning motion about its own axis, with the lower flat surface generally parallel with the ground (see column 1, lines 44-62). Perhaps, since the steps (arm positioning/movements) are so well known and conventional, the patentee (Randall) may have thought that no additional comments were required for all the pitch types. In the event applicant disagrees that the pitches are old and well known, TVDB demonstrates several well-known pitches e.g. fastball, curveball, knuckleball, slider, sinkerball, etc. (see pages 26 and 27). Therefore, in view of Randall's own teaching and TVDB it would have been obvious to carryout a pitch in any well-known manner. The motivation being, to achieve the desired pitch and to make the game of Randall more interesting and at the same time educational for the pitcher and batter.

Response to Arguments

4. Applicant's arguments with respect to claims 24-33 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


MITRA ARYANPOUR
PATENT EXAMINER

MA
11 December 2003